

**TOWN OF GASTON MUNICIPAL COURT
GASTON, SOUTH CAROLINA**

**State Auditor's Report on Applying
Agreed-Upon Procedures
June 30, 2008**

**TOWN OF GASTON MUNICIPAL COURT
GASTON, SOUTH CAROLINA**

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State of South Carolina



Office of the State Auditor

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DEPUTY STATE AUDITOR

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February 12, 2009

The Honorable Mark Sanford, Governor
State of South Carolina
Columbia, South Carolina

The Honorable Troy Bivens, Mayor
Town of Gaston
Gaston, South Carolina

This report resulting from the application of certain agreed-upon procedures to certain accounting records of the Town of Gaston Municipal Court System for the period July 1, 2007 through June 30, 2008, was issued by Cline Brandt Kochenower & Co., P.A., Certified Public Accountants, under contract with the South Carolina Office of the State Auditor.

If you have any questions regarding this report, please let us know.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard H. Gilbert Jr.", written in a cursive style.

Richard H. Gilbert, Jr., CPA
Deputy State Auditor

RHGjr/trb

Richard H. Gilbert, Jr., CPA
Deputy State Auditor
Office of the State Auditor
Columbia, South Carolina

We have performed the procedures described below which were agreed to by the South Carolina Office of the State Auditor solely to assist these users in evaluating the performance of the Town of Gaston Municipal Court System and to assist the South Carolina Office of the State Auditor in complying with the 2007-2008 General Appropriations Act (H. 3620) Section 72.75. Troy Bivens, Mayor for the Town of Gaston, is responsible for compliance with the requirements for the Municipal Court reporting and the South Carolina Office of the State Auditor is responsible for compliance with the requirements of the 2007-2008 General Appropriations Act (H. 3620) Section 72.75. This engagement to apply agreed-upon procedures was performed in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of the procedures is solely the responsibility of the specified users of the report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The procedures and associated findings are as follows:

1. TIMELY REPORTING BY THE CLERK OF COURT

- We researched South Carolina Code of Laws Section 14-25-85 to determine the definition of timely reporting with respect to the Clerk of Court's responsibility for reporting fines, fees and assessments to the Treasurer.
- We inquired of the South Carolina Judicial Department to determine their requirements for both the manner in which partial pay fines and fees are to be allocated and the timing of the report and remittance submissions by the Clerk and the Treasurer.
- We inquired of the Clerk of Court and Treasurer to gain an understanding of their policy for ensuring timely reporting and to determine how the treasurer specifically documents timeliness.
- We inspected documentation, including the Clerk of Court Remittance Forms or equivalents for the months of July 1, 2007 through June 30, 2008 to determine if the Clerk of Court submitted the reports to the Treasurer in accordance with the law.

Our finding is reported under "TIMELY ACCURATE RECORDING AND REPORTING BY THE CLERK OF COURT" in the Accountants' Comments section of this report.

2. TIMELY ACCURATE RECORDING AND REPORTING BY THE TOWN

- We traced each month's reporting by the Clerk of Court to the Treasurer's Office and to the Town's general ledger accounts for the assessments (Sections 14-1-208(A), (B) and (D)) and victim assistance surcharge (Section 14-1-211) for the period July 1, 2007 through June 30, 2008.
- We compared the amounts reported on the Clerk of Court Remittance Forms or equivalents to the Clerk of Court's software system-generated report summaries for three judgmentally determined test months. We tested the system-generated reports for compliance with various laws including Section 35.11 of the General Appropriations Act for the fiscal year 2007 – 2008 and with South Carolina Judicial Department training instructions and interpretations.
- We judgmentally selected and compared individual fine and assessment amounts recorded in the Clerk of Court's software system-generated detail reports to the Judicial Department guidelines range for the offense code to see if the fine and assessment were within the minimum and maximum range.

Our findings are reported under "TIMELY ACCURATE RECORDING AND REPORTING BY THE TOWN" in the Accountants' Comments section of this report.

3. PROPER VICTIM ASSISTANCE FUNDS ACCOUNTING

- We inquired as to the format determined by Town council and local policy for record keeping as it relates to fines and assessments in accordance with Section 14-1-208(E)(4).
- We compared the fiscal year-ended June 30, 2007 audited Victim Assistance Fund fund balance with all adjustments to the fund balance shown in the Supplemental Schedule of Fines and Assessments of the audited financial statement and to the beginning fund balance as adjusted in that fund for fiscal year 2008.
- We judgmentally selected a sample of Victim Assistance Fund reimbursable expenditures and verified that these expenditures were in compliance with Section 14-1-208(E) and Section 14-1-211(B).

Our findings are reported under "PROPER VICTIM ASSISTANCE FUNDS ACCOUNTING" in the Accountants' Comments section of this report.

4. TIMELY ACCURATE REPORTING TO THE STATE TREASURER

- We vouched the amounts reported in the South Carolina State Treasurer's Revenue Remittance Forms to Clerk of Court Remittance Forms or equivalents for the period July 1, 2007 through June 30, 2008.
- We scanned the South Carolina State Treasurer's Revenue Remittance Forms for timely filing in accordance with Section 14-1-208(B).
- We traced amounts recorded in the Town's financial statement Supplemental Schedule of Fines and Assessments of the year ended June 30, 2007 report related to fines and assessments revenues reporting in accordance with Section 14-1-208(E) to supporting schedules used in the audit to comply with Section 14-1-208(E).
- We traced and agreed amounts in the supporting schedules to the Clerk of Court Remittance Forms or South Carolina State Treasurer's Revenue Remittance Forms.

Our findings are reported under "TIMELY ACCURATE REPORTING TO THE STATE TREASURER" in the Accountants' Comments section of this report.

5. STATUS OF PRIOR FINDINGS

- We tested the Town's responses to the findings of the State Auditor's Report on Agreed-upon Procedures for the procedures period April 30, 2006, and dated October 15, 2006.

The results of our procedures are reported in "STATUS OF PRIOR FINDINGS" in the Accountants' Comments section of this report.

We were not engaged to, and did not conduct an audit the objective of which would be the expression of an opinion on compliance with the collection and distribution of court generated revenue at any level of court for the twelve months ended June 30, 2008 and, furthermore, we were not engaged to express an opinion on the effectiveness of the internal controls over compliance with the laws, rules and regulations described in paragraph one and the procedures of this report. Had we performed additional procedures other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the Governor, Chairmen of the House Ways and Means Committee, Senate Finance Committee, House Judiciary Committee, Senate Judiciary Committee, members of the Gaston Town Council, Town Clerk of Court, Town Treasurer, State Treasurer, State Office of Victim Assistance, Chief Justice and the Office of the State Auditor and is not intended to be and should not be used by anyone other than these specified parties.



August 21, 2008

ACCOUNTANTS' COMMENTS

TOWN OF GASTON MUNICIPAL COURT
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State Auditor's Report
June 30, 2008

SECTION A - VIOLATIONS OF STATE LAWS, RULES OR REGULATIONS

Management of the entity is responsible for establishing and maintaining internal controls to ensure compliance with State Laws, Rules or Regulations. The procedures agreed to by the entity require that we plan and perform the engagement to determine whether any violations of State Laws, Rules or Regulations occurred.

The conditions described in this section have been identified as violations of State Laws, Rules or Regulations.

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TIMELY REPORTING BY THE CLERK OF COURT

TIMELY FILING

CONDITION: The Clerk of Court and Treasurer have no procedure in place or policy to document timeliness of reporting.

CRITERIA: South Carolina Code of Laws Sections 14-1-208 (A) states "...This assessment must be paid to the Municipal Clerk of Court and deposited with the city treasurer for remittance to the State Treasurer...." Section 14-1-208(B) states further "The city treasurer must remit 12 percent of ... the assessment ... to the municipality and remit the balance of the assessment revenue to the State Treasurer on a monthly basis by the fifteenth day of each month Assessments paid in installments must be remitted as received."

CAUSE: The Clerk of Court and Treasurer have not developed a policy to document timeliness.

EFFECT: Because there is no procedure to document timeliness, vesting responsibility for timely filing is difficult.

AUDITORS' RECOMMENDATION: The Town should develop and implement a policy whereby they comply with State law and document the compliance.

TIMELY ACCURATE RECORDING AND REPORTING BY THE TOWN

ADHERENCE TO JUDICIAL DEPARTMENT FINE GUIDELINES

CONDITION: The Municipal Court Judge did not adhere to the Judicial Department minimum/maximum fine guidelines included in the respective laws on one fine levied. A similar finding was noted in the State Auditor's Report for the procedures period ended April 30, 2006 and dated October 5, 2006.

CRITERIA: Judicial Department Guidelines for Fines – Minimums and Maximums. These guidelines are obtained from the minimum and maximum fines recorded in the respective laws.

CAUSE: The Judge did not use the current Judicial Department's fine guidelines.

EFFECT: By not assessing the minimum fines as required in the legislation, the Town is violating the law.

AUDITORS' RECOMMENDATION: We recommend that the Judge comply with the state law by using the correct minimum/maximum fine guidelines.

RECEIPT OMISSIONS

CONDITION 1: The Town did not enter any receipt for fine payments into its computer system during the procedures period in a timely manner. Furthermore the Town did not make timely remittances to the State Treasurer.

CRITERIA: South Carolina Code of Laws Section 14-1-208 (B) states "The city treasurer must remit 12 percent of ... the assessment ... to the municipality and remit the balance of the assessment revenue to the State Treasurer on a monthly basis by the fifteenth day of each month "Assessments paid in installments must be remitted as received."

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CAUSE: The Clerk did not enter receipts into the computer system.

EFFECT: By not timely inputting collections into the computer system, monthly collections are incomplete. Therefore, monthly remittance forms, while not filed timely, were also not complete and did not represent all collections for the given month.

AUDITORS' RECOMMENDATION: The Town should develop and implement procedures to ensure timely recording of accounting transactions. We also recommend the Town implement procedures to ensure timely remittance of fines to the State Treasurer.

CONDITION 2: The Town stopped submitting reports to the State Treasurer when they discontinued the operation of their court system in January 2008. However the Town continued to receive installment payments on prior adjudicated fines. The Town did not report the receipt of funds to the State Treasurer.

CRITERIA: South Carolina Code of Laws Section 14-1-208 (B) states "Assessments paid in installments must be remitted as received."

CAUSE: The Clerk did not enter receipts into the computer system or prepare the monthly Treasurer reports.

EFFECT: By not properly accounting for and reporting the court fines the Town was not in compliance with State law.

AUDITORS' RECOMMENDATION: The Town should determine the collections receipted since it discontinued the municipal court in January. The Town should determine the amount due to the State and remit the amount due as soon as possible. The Town should also determine the amount due to Victim Assistance and transfer the money to the Victim Assistance account.

IMPROPER CLASSIFICATION OF VIOLATION

CONDITION 1: The charge for "Open Container" violations were not properly allocated between fines, assessments and surcharges. A similar finding was noted in the State Auditor's Report for the procedures period ended April 30, 2006 and dated October 5, 2006.

CRITERIA: South Carolina Code of Laws Section 14-1-211(A)(1) states, "A twenty-five dollar surcharge is imposed on all convictions obtained in municipal court" and "the surcharge must not be imposed on convictions for misdemeanor traffic offenses."

CAUSE: The clerk accounted for these charges as traffic offenses rather than non-traffic offenses.

EFFECT: The \$25 conviction surcharge was allocated between fines and assessments rather than as a surcharge.

AUDITORS' RECOMMENDATION: We recommend the Town make adjustments to the Victim Assistance fund and adjust collections reported to the State Treasurer as assessments and fines that were over-reported in the Town general fund

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CONDITION 2: The charge for "no drivers license issued" violations were not properly allocated between fines, assessments and surcharges. A similar finding was noted in the State Auditor's Report for the procedures period ended April 30, 2006 and dated October 5, 2006.

CRITERIA: South Carolina Code of Laws Section 14-1-211(A)(1) states, "A twenty-five dollar surcharge is imposed on all convictions obtained in municipal court" and "the surcharge must not be imposed on convictions for misdemeanor traffic offenses."

CAUSE: The clerk recorded these charges as non-traffic offenses rather than misdemeanor traffic offenses.

EFFECT: The \$25 conviction surcharge was charged on the "no drivers license issued" violations when the law says the surcharge must not be imposed on convictions for misdemeanor traffic offenses.

AUDITORS' RECOMMENDATION: We recommend the Town adjust the Victim Assistance fund for collections reported as conviction surcharges and reallocate those collections as applicable to the State Treasurer.

LAW ENFORCEMENT SURCHARGES

CONDITION: The Town has not properly recorded the Law Enforcement Surcharge for the fines reported on the monthly dockets that were used to calculate the fine allocations. A similar finding was noted in the State Auditor's Report for the procedures period ended April 30, 2006 and dated October 5, 2006.

CRITERIA: The 2007-2008 General Appropriations Act (H. 3620) Part IB Section 73.2 states "...In addition to all other assessments and surcharges, during the current fiscal year, a twenty-five dollar surcharge is also levied on all fines, forfeitures, escheatment's, or other monetary penalties imposed in...municipal court."

CAUSE: The Treasurer allocated the fines levied manually and was not aware that part of the fine levied should have included a \$25 Law Enforcement Surcharge.

EFFECT: The Town did not allocate the correct amount to the Law Enforcement Surcharge. The Treasurer did not properly report or submit the \$25 collected on every fine as the Law Enforcement Surcharge. Instead it retained the money as local fine revenue.

AUDITORS' RECOMMENDATION: The Town should determine the amount that it improperly retained and submit amended reports to the State Treasurer along with the amount due.

PROPER VICTIM ASSISTANCE FUNDS ACCOUNTING

LACK OF PROPER ACCOUNTING

CONDITION: The Town did not accurately and consistently record victim assistance fund revenue in their general ledger. A similar finding was noted in the State Auditor's Report for the procedures period ended April 30, 2006 and dated October 5, 2006.

CRITERIA: South Carolina Code of Laws Section 14-1-208 (B) states "The city treasurer must remit ... the assessment ... to the municipality to be used for the purposes set forth in subsection (D)." and Code of Laws Section 14-1-208 (E)(4) states "The clerk of court and municipal treasurer shall keep records of fines and assessments required to be reviewed pursuant to this subsection...."

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CAUSE: The Clerk of Court and Treasurer ceased court accounting procedures as of July 2006.

EFFECT: The Town's Victim Assistance records are not accurate.

AUDITORS' RECOMMENDATION: The Town should design and implement a system to prospectively maintain accurate records. The Town should determine the amounts that should have been transferred to Victim Assistance and make the necessary adjustments to its accounting records to correct any inaccurate account balances.

IMPROPER EXPENDITURES

CONDITION: The Town withdrew money from the Victim Assistance bank account without proper supporting documentation or justification to demonstrate that the money was used to provide victim services in accordance with the law.

CRITERIA: South Carolina Code of Laws Section 14-1-208(D) states, "The revenue retained by the municipality under subsection (B) must be used for the provision of services for the victims of crime including those required by law."

CAUSE: The Town did not follow the guidance when determining how to spend the monies in the Victim Assistance Fund.

EFFECT: Money may have been used for a purpose other than those proscribed by the law.

AUDITORS' RECOMMENDATION: The Town should immediately reimburse the fund for the \$2,123.92 withdrawn from the Victim Assistance funds bank account.

TIMELY ACCURATE REPORTING TO THE STATE TREASURER

TIMELY FILING

CONDITION: The Town only held court from July 2007 through January 2008. Therefore only seven State Treasurer's Remittance Reports for the procedure period were due to the State. None of the seven State Treasurer's Remittance Reports for the procedures period July 1, 2007 through June 30, 2008 were filed. A similar finding was noted in the State Auditor's Report for the procedures period ended April 30, 2006 and dated October 5, 2006.

CRITERIA: South Carolina Code of Laws Sections 14-1-208 (B) states "The city treasurer must remit ... on a monthly basis by the fifteenth day of each month...."

CAUSE: The Clerk did not prepare the remittance form and therefore no remittance forms were submitted.

EFFECT: The Town did not comply with the timely filing requirement.

AUDITORS' RECOMMENDATION: The Town should develop and implement a policy whereby they comply with State law.

SUPPLEMENTAL SCHEDULE OF FINES AND ASSESSMENTS

CONDITION The Supplemental Schedule of Fines and Assessments was unavailable. A similar finding was noted in the State Auditor's Report for the procedures period ended April 30, 2006 and dated October 5, 2006.

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CRITERIA: South Carolina Code of Laws Section 14-1-208(E) states "the annual independent external audit ... must include ... a supplementary schedule detailing all fines and assessments collected at the court level, the amount remitted to the municipal treasurer, and the amount remitted to the State Treasurer."

CAUSE: The audit was not complete for the fiscal year ending June 30, 2007.

EFFECT: Schedules have not been prepared in accordance with South Carolina Code of Laws Section 14-1-208(E).

AUDITORS'RECOMMENDATION: We recommend that the Town implement the procedures to ensure it receives an audit in a timely manner.

ACCURACY IN FILED REMITTANCE REPORTS

CONDITION: Because of omissions, the Revenue Remittance forms that were submitted during the procedures period were not accurate.

CRITERIA: South Carolina Code of Laws Section 14-1-208(B) states "the city treasurer must remit the balance of the assessment revenue to the State Treasurer on a monthly basis by the fifteenth day of each month and make reports on a form and in a manner proscribed by the State Treasurer."

CAUSE: The Town allocates the fines manually and lacks training in how to properly complete the monthly remittance forms.

EFFECT: The Town has not reported the correct amounts to the State for law enforcement surcharges, DUI assessments, DUI surcharges, DUS pullouts, DUI pullouts or for victim assistance.

AUDITORS' RECOMMENDATION: The Town should determine the cumulative effect of the errors made, contact the State Treasurer's Office and make corrections as instructed.

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State Auditor's Report, Continued
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SECTION B - STATUS OF PRIOR FINDINGS

During the current engagement, we reviewed the status of corrective action taken on each of the findings reported in the Accountant's Comments section of the State Auditor's Report on the Town of Gaston for the procedures period ended April 30, 2006, and dated October 5, 2006. We determined that the Town has taken no corrective action on the following:

- Adherence to Judicial Department Fine Guidelines
- Law Enforcement Surcharges
- Other Fines, Assessments and Surcharges
- Lack of Proper Victim Assistance Accounting
- Timely Filing
- Supplemental Schedule of Fines and Assessments

The above findings were repeated for the procedures period ending June 30, 2008.



Troy R. Bivens
Mayor

Town of Gaston
131 North Carlisle St.
P.O. Box 429
Gaston, SC 29053
PH: (803) 796-7725 Fax: (803) 739-5793

COUNCIL MEMBERS

Marvin Pound, Jr.
Charlie R. Sbarpe
Kelly Delk

Jennifer Bellotti
Town Clerk

Building Official

February 2, 2009

Richard H. Gilbert, Jr., CPA
Deputy State Auditor
Office of the State Auditor
1401 Main Street, Suite 1200
Columbia, South Carolina 29201

The purpose of this letter is to respond to the Findings for the agreed-upon procedures tested by the firm of Cline, Brandt, Kochenower & Co., P.A. The agreed-upon procedures, as defined by the South Carolina Office of the State Auditor, were administered solely to assist the Town of Gaston, South Carolina Municipal Court System and to assist the South Carolina Office of the State Auditor in complying with the 2007-2008 General Appropriations Act (H. 3620) Section 72.75.

As mayor for the Town of I am aware that it is my responsibility to comply with the requirements for the Municipal Court reporting.

The following are the findings related to the agreed-upon procedures:

- The Clerk of Court and Treasurer have no procedure in place or policy to document timeliness of reporting.
- 2 The Municipal Court Judge did not adhere to the Judicial Department minimum/maximum fine guidelines included in the laws on one fine levied.
- 3 The town did not enter any receipts for fine payments into its computer system during the procedures period in a timely manner. Furthermore, the Town did not make timely remittances to the State Treasurer.
- 4 The Town ceased reporting to the State Treasurer when they discontinued the operation of their court system in January 2008. However the Town continued to receipt installment payments on prior adjudicated fines. The Town has omitted these receipts from the reporting process.
- 5 The charge for "Open Container" violations were not properly allocated between fines, assessments and surcharges.
- 6 The charge for "no" driver's license issued' violations were not properly allocated between fines, assessments, and surcharges.
- 7 The Town has not properly recorded the Law Enforcement Surcharge for the fines reported on the monthly dockets that were used to calculate the fine allocations.

- 8 The Town did not accurately and consistently record the victim assistance fund revenue in their general ledger.
- 9 The Town withdrew money from the Victim's Assistance bank account without proper supporting documentation or justification to demonstrate that the money was used to provide victim services in accordance with the law.
- 10 The Town only held court from July 2007 to January 2008. Therefore only seven State Treasurer's Remittance Reports for the procedure period were due to the State. None of the seven State Treasurer's Remittance Reports for the procedures period July 1, 2007 through June 30, 2008 were filed.
- 11 The annual audit was not completed for the fiscal year ending June 30, 2007.
- 12 Because of omissions, the Revenue Remittance forms that were submitted during the procedures period were not accurate.

The Town's response to the findings are as follows:

History

The previous Mayor, town administrator, and town clerk were investigated for fraud by the State Law Enforcement Division (SLED) around January 2008. This was the same time that the Court, as well as the police department, was shut down. The Municipal Association of South Carolina hired an outside accounting firm to investigate the Town's books, and all employees who had knowledge of the process covered in the afore-mentioned agreed-upon procedures were released. SLED has yet to indict the prior administrator's, but it was clear based on the limited information that fraud did occur, and did include both the police fines and assessments, as well as the Victims Assistance fund.

Since this time we have had special elections in order to elect the Town Council, and Mayor. We have hired new administrative personnel in the Town Administration office. We have contracted a third party accounting firm to help implement policies and procedures, as well as balance the Town's books and file reports timely and accurately.

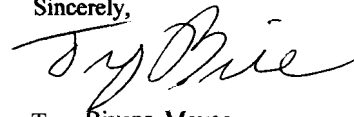
We feel that the Town is moving in a positive direction to fix all of the above procedural problems. We are not in disagreement with any of the findings. We have already begun the following processes to fix the issues:

- Policies will be written and administered in order to comply with State and Federal law, as it pertains to accounting policies & procedures, reports, and remittances. We are working currently to make this happen through the Municipal Association of South Carolina, and our third party accounting firm.
- 2 The prior Municipal Judge will be sent a copy of both the findings and this letter in order to respond to the Town on the procedural and fine issues.
- 3 The records are in disarray to say the least as they pertain to the court procedures and the Town's books. The third party accounting firm will develop and implement a process by which to calculate the remittances, classifications, debt, and payments made or owed to the State Treasurer's Office. While SLED was doing their investigations the Town's records were under their control, and we could not proceed with an audit. It was at this time that the previous Mayor fired the Police department, and the records (if they ever existed) are still not collated properly to make a calculation. We are also unsure of the process already administered by the State Auditor's Office. Is an audit going to be performed to come up with a calculation for payment due the State Treasurer's Office? Do we spend both our resources to perform the same audit and argue over the differences? If the previous administrators are found guilty of fraud and embezzlement to whom do they owe the money?
- 4 We are in the process of producing an RFP to hire an independent auditor. It appears that the Town has not been audited in eight years. The records to go back eight years would be impossible to discern. We plan to request a Statement of Net Assets audit at June 30, 2007 and a Financial Statement Audit at June 30, 2008.
- 5 The Victim's Assistance fund has been closed along with the police department. The money that is owed can be applied to the fund; we are seeking guidance as to how to close the

- 6 The seven remittance reports will be filed with the State Treasurer's office, along with the post-closing remittances for prior adjudicated fines.

Thank you for your time and consideration in these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Troy Bivens". The signature is fluid and cursive, with the first name "Troy" and last name "Bivens" clearly distinguishable.

Troy Bivens, Mayor
Town of Gaston